

Office of the Secretary, Interior

§4.1391

the public health or safety or cause significant, imminent environmental harm to land, air or water resources;

(3) A statement whether the petitioner requests an evidentiary hearing.

(d) Any party may file a response to the petition no later than 5 days after it was served and may request a hearing even if the petitioner has not done so.

(e) The administrative law judge may hold a hearing on any issue raised by the petition within 10 days of the filing of responses to the petition, and shall do so if a hearing is requested by any party.

(f) The administrative law judge shall issue an order or decision granting or denying the petition for temporary relief within 5 days of the date of a hearing on the petition or, if no hearing is held, of service of the responses to the petition on all parties.

(g) The administrative law judge may only grant temporary relief if:

(1) All parties to the proceeding have been notified of the petition and have had an opportunity to respond and a hearing has been held if requested;

(2) The petitioner has demonstrated a substantial likelihood of prevailing on the merits; and

(3) Temporary relief will not adversely affect public health or safety or cause significant, imminent environmental harm to land, air or water resources.

(h) Any party may file an appeal of an order or decision granting or denying temporary relief with the Board within 30 days of receipt of the order or decision or, in the alternative, may seek judicial review within 30 days in accordance with section 526(a) of the Act, 30 U.S.C. 1276(a). If an appeal is filed with the Board, the Board shall issue an expedited briefing schedule and shall decide the appeal expeditiously.

[59 FR 54363, Oct. 28, 1994, as amended at 67 FR 4368, Jan. 30, 2002]

§4.1387 Petition for discretionary review of initial decisions.

(a) Any party may file a petition for discretionary review of an initial decision of an administrative law judge issued under §4.1385 with the Board within 30 days of receipt of the deci-

sion. An untimely petition shall be dismissed.

(b) The petition for discretionary review shall set forth specifically the alleged errors in the initial decision, with supporting argument, and shall attach a copy of the decision.

(c) Any party may file a response to the petition for discretionary review within 30 days of its service.

(d) The Board shall issue a decision denying the petition or granting the petition and deciding the merits within 60 days of the deadline for filing responses.

REQUEST FOR REVIEW OF OSM DETERMINATIONS OF ISSUES UNDER 30 CFR PART 761 (FEDERAL PROGRAM; FEDERAL LANDS PROGRAM; FEDERAL PROGRAM FOR INDIAN LANDS)

SOURCE: 52 FR 39530, Oct. 22, 1987, unless otherwise noted.

§4.1390 Scope.

Sections 4.1391 through 4.1394 set forth the procedures for obtaining review of an OSM determination under 30 CFR 761.16 that a person does or does not have valid existing rights.

[67 FR 61512, Oct. 1, 2002]

§4.1391 Who may file; where to file; when to file; filing of administrative record.

(a) The person who requested a determination under 30 CFR 761.16 or any person with an interest that is or may be adversely affected by a determination that a person does or does not have valid existing rights may file a request for review of the determination with the office of the OSM official whose determination is being reviewed and at the same time shall send a copy of the request to the Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203 (telephone 703-235-3750). OSM shall file the complete administrative record of the determination under review with the Board as soon as practicable.

(b) OSM must provide notice of the valid existing rights determination to the person who requested that determination by certified mail, or by overnight delivery service if the person has